

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**DAVE L. EWING**

Claimant

VS.

**UNIFIED SCHOOL DISTRICT 259**

Respondent

Self-Insured

)  
)  
)  
)  
)  
)  
)

Docket No. 192,766

**ORDER**

Claimant appeals from the Award entered by Special Administrative Law Judge Michael T. Harris on March 4, 1997. The Appeals Board heard oral arguments on August 8, 1997, in Wichita, Kansas.

**APPEARANCES**

Tamara J. Pistotnik of Wichita, Kansas, appeared on behalf of claimant. Richard J. Liby of Wichita, Kansas, appeared on behalf of respondent, a qualified self-insured.

**RECORD AND STIPULATIONS**

The Appeals Board has reviewed the record listed in the Award. The Appeals Board has also adopted the stipulations listed in the Award.

**ISSUES**

The Special Administrative Law Judge denied compensation for permanent disability. Claimant seeks review of the findings and conclusions concerning the nature and extent of claimant's disability. Specifically, claimant alleges he is entitled to an award for permanent impairment to his right hand or forearm. The issues concerning temporary total disability compensation and the arguments that claimant is entitled to a permanent

disability award for injuries to other parts of his body were withdrawn by claimant's counsel at oral argument. Likewise, unauthorized medical expense is no longer an issue. Respondent will reimburse claimant for the unauthorized medical expenses incurred by claimant at the Beck Chiropractic Clinic up to the statutory maximum. Respondent raises an issue concerning the award of future medical.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes that the findings and conclusions by the Special Administrative Law Judge concerning the nature and extent of claimant's disability should be affirmed. Claimant has failed in his burden of proving that he sustained permanent injury as a result of his work-related accident. As such, he would not be entitled to future medical at the expense of the respondent.

Claimant was treated and/or examined by several physicians including board-certified orthopedic surgeons J. Mark Melhorn, M.D., James L. Gluck, M.D., and Anthony G. A. Pollock, M.D. All three found claimant's subjective symptoms and complaints to be excessive in relation to their objective findings. Furthermore, claimant's description of his injuries was inconsistent at best. The Appeals Board finds claimant's testimony to be unreliable. The opinion testimony of Daniel D. Zimmerman, M.D., to the extent he relied upon the subjective complaints and unreliable effort given him by claimant on range of motion and strength testing, renders that testimony likewise unreliable.

In workers compensation proceedings claimant bears the burden of proof. See K.S.A. 44-501(a). "Burden of proof" means the burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record." K.S.A. 44-508(g). The Special Administrative Law Judge assigned to this case found claimant injured his right hand at work but sustained no permanent impairment. The Appeals Board agrees that the greater weight of the credible evidence supports the Special Administrative Law Judge's conclusion in this regard.

Although the Special Administrative Law Judge determined claimant had no permanent impairment, he nevertheless awarded future medical upon application to and approval by the Director. In the absence of proof of permanency from the work-related accident, this portion of the Special Administrative Law Judge's Award should be reversed.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Special Administrative Law Judge Michael T. Harris dated March 4, 1997, should be, and is hereby, reversed as to the award of future medical

benefits but otherwise should be, and is hereby, affirmed as to the nature and extent of claimant's disability and in all other respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1997.

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

c: Tamara J. Pistotnik, Wichita, KS  
Robert G. Martin, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director